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November 30, 1993

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Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W. -- Room 222  
Washington, D.C. 20554

Re: Notice of Ex Parte Contact  
GN Docket No. 93-253

Dear Mr. Caton:

Wiley, Rein & Fielding hereby files a copy of a notification of an ex parte contact in GN Docket No. 93-253. Copies of the attached addenda to the summary of comments in GN Docket No. 93-253 were distributed to a number of members of the Federal Communications Commission.

If any questions should arise concerning this notification, please contact the undersigned at (202) 828-3182.

Respectfully submitted,



Eric W. DeSilva

Encl.

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MEMORANDUM

FROM: Wiley, Rein & Fielding  
DATE: November 30, 1993  
RE: Competitive Bidding Summaries

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On November 17, 1993, we distributed summaries of the opening comments in the FCC's competitive bidding implementation proceeding (GN Docket 93-253). Due to difficulties in obtaining materials on short notice from the docket file, only one of two filings from the United States Small Business Administration was summarized. The November 17, 1993, document included a summary of the filing by the SBA's Office of Procurement Assistance, but not a summary of the filing by the Office of Advocacy. A summary of the US SBA's Office of Advocacy comments is attached.

**UNITED STATES SMALL BUSINESS ADMINISTRATION**  
**Office of Advocacy**

**Interest:** Advocacy arm of the Federal agency charged with increasing opportunities for small businesses.

**Bidding Methods:**

- Supports open, sequential bidding to promote rapid development and maximize opportunities. (31, 34)
- Opposes sealed bidding, since some entities may overvalue the spectrum. (34)

**Combinatorial Bidding:**

- Opposes use of combinatorial bidding since it could result, as a practical matter, in foreclosing opportunities and no certainty exists that combinatorial bidding will speed deployment. (31-34)

**Treatment of Designated Entities:**

- Opposes use of existing SBA "small business" test; believes a more appropriate standard for telecommunications auctions would be a test based on capacity to compete financially centered on revenue, i.e., revenues less than \$40 million (e.g., Tier 3 LECs). (8-11)
- Consortia of small businesses should still qualify for designated entity status even if they exceed the revenue cap. (11-12)
- Opposes proposal to define "rural telco" as defined under cable/telco cross-ownership ban; suggests instead a standard of serving less than 50,000 access lines or, alternately, one that serves an incorporated or unincorporated non-metropolitan area with less than 20,000 inhabitants. (13-14)
- Definition of "rural telco" should also consider holdings of parent company. (14)
- Special treatment for rural telcos should be limited to their serving area. (14-15)
- For evaluating eligibility of consortia of designated and non-designated entities, the FCC should not use equity or actual equity measures, but rather actual control of the business, extending to decisions concerning capital expenditures. (16-17)
- Set-asides for designated entities are warranted under statutory provisions mandating that small businesses receive

a fair proportion of the total sales of government property (15 USC §644(a)(4)). (19-20)

- Installment payment schemes for designated entities are appropriate as they will allow such entities to utilize their limited capital for actual construction and operation. (20-21)
- Designated entities should not be required to pay interest on installment payments in order to speed PCS deployment and in recognition of the fact that the government is not loaning money, but selling spectrum. (22-23)
- Suggests that royalty payments are appropriate using "subscription fees" or airtime as the basis for measurable output and would not be complex to administer. (24-26)
- Suggests allowing designated entities to use bonds or other financial instruments for down payments (or any post-auction cash payment) and opposes automatic forfeiture provisions of such funds to avoid deterring sincere participants. (27-28)

**Safeguards:**

- Antitrafficking rules for designated entities should not prevent legitimate transfers that will lead to more rapid development; SBA supports requiring transferors to disgorge excess profits and cancelling the license of a party found to be transferring for the purpose of unjust enrichment. (35-37)
- Suggests that any finding of collusion should result in license forfeiture and a bar on participation in further auctions. (37-38)
- Agrees with the need for performance requirements. (39)

**Application Processing Requirements:**

- Suggests allowing designated entities sufficient time to prepare for lotteries and providing such entities with some leeway due to their lack of familiarity with FCC rules. (39-41).

**Other:**

- Supports use of an innovator's preference not limited to (but at a minimum for) designated entities; such a preference would take the form of a bid credit. (29-30)

MEMORANDUM

FROM: Wiley, Rein & Fielding  
DATE: November 29, 1993  
RE: Competitive Bidding Summaries

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On November 17, 1993, we distributed summaries of the opening comments in the FCC's competitive bidding implementation proceeding (GN Docket 93-253). Due to difficulties in obtaining materials on short notice from the docket file, the comments of PacTel Paging, Inc. and Midpoint Media, Inc. were not summarized with the other comments. A summary of their comments is attached.

## **PACTEL PAGING AND MIDPOINT MEDIA, INC.**

**Interest:** Private and common carrier licensees in radio paging, traditional mobile telephone and cellular telephone services. All comments address narrowband PCS auctions and non-cellular land mobile services.

### **Applicability of Competitive Bidding:**

- Opposes auctioning licenses used in services as an intermediate link in the provision of a continuous end-to-end service offering to a subscriber. (17)

### **Bidding Methods:**

- Recommends against mixed bidding (oral and sealed together) and "second round" bidding mechanisms. (16)

### **Sequence of Bidding:**

- Blocks of spectrum that are substitutable and equivalent should be auctioned simultaneously so that there is a consistent price. (12)
- All applicants interested in bidding on a particular type of license should be included in a common pool so that each has an opportunity to bid for all licenses of that type. Simultaneous bidding that lasts a reasonable length of time will best implement this strategy. (13-14)
- The Commission should auction licenses in the following order: all nationwide licenses starting with the largest bandwidths and ending with the narrowest; regional licenses from largest bandwidth to smallest. All MTAs should be auctioned simultaneously by electronic bidding. All BTAs in a single MTA should be auctioned simultaneously to facilitate aggregation, starting with the group comprising the largest MTA. If simultaneous bidding of all regions is not possible, MTAs should be auctioned from largest to smallest. (20-21)

### **Combinatorial Bidding:**

- Against sealed combinatorial bidding for narrowband licenses. (22)

### **Payment Methods:**

- Support no minimum bid requirement and utilization of upfront payments, bid deposits and lump sum payments. (23)

- Support requiring upfront payment of 2 cents per megahertz per population for narrowband bidders in advance of the auction. Upfront payment should be tendered within 5 business days after acceptance of the short form application. (23)
- Recommend that successful bidder be required to pay the difference between the upfront payment and the 20% deposit payment within 5 days after auction is conducted. If payment is not made, all narrowband PCS licenses held by that bidder and all amounts held by the FCC for that bidder should be forfeited. (25)

**Treatment of Designated Entities:**

- No further preferences are needed for designated entities because of the large number and variety of licenses that will be issued. In addition, the limits on the number of licenses one entity can control and the small upfront payments due in many cases will ensure that designated entities have a meaningful opportunity to participate. Further benefits to designated entities, such as tax certificates, will adversely affect competitors because of the low-margin nature narrowband PCS is likely to have. (31)

**Safeguards:**

- Oppose any transference restrictions on PCS licenses. (27)
- The FCC should adopt anti-collusion measures that prevent violations of antitrust law or federal bid rigging statutes. Any other restrictions could prevent often necessary cooperation between small licensees. (28-29)

**Specific Services:**

- Existing services such as paging have constant requirements for licensing new sites and channels, and mutual exclusivity issues arise frequently. The auction legislation effectively suspends the continued processing of competing applications until the auctions. To avoid disruption to existing services, the Commission should: 1) process all applications under the lottery system received before July 26, 1993 under pre-existing procedures; 2) preserve licensing mechanisms for voluntary resolution of mutual exclusivities; 3) not

delay adoption of final rules for long standing services while attention is focused on PCS services. (8-11)

- Recommend inclusion of a mechanism to maximize the assignment of a common frequency or frequencies to a single licensee who wins in multiple geographic areas. Commission should reserve right to make specific frequency assignments from among blocks of fungible channels. This should be done after the entire block of fungible channels is auctioned off for all geographic areas. Then, specific frequency selections should be made to maximize the assignment of a common channel in multiple territories, starting with the applicant who paid the highest aggregate bid price. Applicants can then swap frequencies among themselves. (30)

**Application Processing Requirements:**

- Applicants should be able to file one form to bid on many licenses. (15)
- Short form application should not be subject to letter perfect standard. (23)
- Oppose requirement that auction participants file detailed long form applications. (27)
- Recommend retention of post-auction petition to deny process. Limits on settlement payments will be a sufficient deterrent for strike petitions. (29-30)